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In re Application of
SALKINER et al.
Serial No.: 10/505,283
Filing Date: 18 August 2004
Attorney Docket No.: 04545/LH
For: MAGNETO-MASSAGE SYSTEM

: DECISION ON
:
: PETITION UNDER
:
: 37 CFR 1.137(b)
:

This decision is in response to applicants' "Petition for Revival of an Application for Patent Unintentionally [Abandoned] Under 37 CFR § 1.137(b)" filed on 18 August 2004 in the above referenced application. The Petition is **GRANTED** as discussed below.

BACKGROUND

On 03 July 2002, applicant filed international application PCT/IL02/00543, which designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 23 January 2003. The expiration of the thirty-month period for paying the basic national fee for entry into the national stage in the United States was 13 January 2004.

On 18 August 2000, applicants submitted application papers including a Transmittal Letter requesting filing the international application PCT/IL02/00543 pursuant to 37 CFR 1.53(b), accompanied by a specification, including claims and drawings, the instant petition to revive the international application as to the United States under 37 CFR 1.137(b) and requisite petition fee. Inserted at the beginning of the specification, applicant states: "This application is a Continuation of PCT/IL02/00543 filed July 3, 2002, the entire contents of which are incorporated herein by reference." The application was assigned serial no. 10/505,283 and is considered filed under 35 U.S.C. 111.

DISCUSSION

The transmittal letter filed on 18 August 2004 did not identify the application as a national stage application being filed under 35 U.S.C. 371. The specification submitted with the transmittal letter indicated that the filing was a continuation application and thus should have been considered as filed under 35 U.S.C. 111. Since the application is deemed to have been filed under 35 U.S.C. 111, international application PCT/IL02/00543 is abandoned with respect to the United States.

The filing of the continuing application under 35 U.S.C. 111 is accepted as the appropriate response under 37 CFR 1.137(b). See MPEP § 711.03(c). International application PCT/IL02/00543 is being revived for purposes of continuity only and since continuity has been established by this decision reviving the international application, the international application is again abandoned in favor of the present continuing application number 10/505,283.

Applicant's statement that "the entire delay in filing said Continuation of said International application from the due date of July 13, 2004 until the filing of a grantable Petition Under 37 CFR 1.137 was unintentional" has been interpreted as meaning that "entire delay in filing the required reply from the due date for the reply until the filing of this petition under 37 CFR 1.137(b) was unintentional" as required by 37 CFR 1.137(b)(3) at the time of filing this petition. If this is an incorrect interpretation in view of the rules, petitioner is required to promptly notify this office. All of the requirements of 37 CFR 1.137(b) for revival have been submitted.

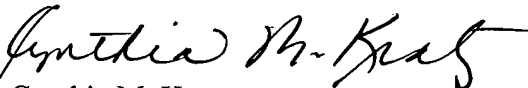
Applicants are entitled to claim benefit under 35 U.S.C. 120 and 365(c) of the filing date of the international application for the common subject matter, since this application (Serial No. 10/505,283) and the international application (PCT/IL02/00543) designating the United States were copending on 18 August 2004. In order to obtain benefit of the earlier international application, applicants amended the beginning of the specification of this application by inserting a proper reference to the parent international application with the statement: "This is a Continuation of PCT/IL02/00543 filed July 3, 2002, the entire contents of which are incorporated herein by reference."

CONCLUSION

The petition to revive the unintentionally abandoned international application is **GRANTED**.

U.S. application 10//505,283 is NOT the national stage application of international application PCT/IL02/00543. Applicants have amended the first sentence of the specification accordingly.

This application is being returned to Office of Initial Preliminary Examination (OIPE) for further processing in accordance with this decision, including according a filing date of 18 August 2004. The application will then be examined in due course.



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